

**REAL PROPERTY APPRAISER BOARD
LIQUOR CONTROL HEARING ROOM, 5TH FLOOR
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE
November 20, 2008**

OPENING

Chairman Joe Wilson called to order the November 20, 2008, meeting of the Nebraska Real Property Appraiser Board at 9:15 a.m., in the Liquor Control Hearing Room, 5th Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

NOTICE OF MEETING

Chairman Wilson announced the notice of the meeting was duly given, posted, published and tendered in compliance with the Open Meetings Act, and all Board members received notice simultaneously by e-mail. The agenda was kept current in the Nebraska Real Property Appraiser Board Office and on the Board's website. Materials generally used by the Board for this meeting were available in the public folder for inspection by the public and in accordance with the Open Meetings Act. A copy of the Open Meetings Act was available for the duration of the meeting. For the record, Board Members Bradford Moore, Timothy Kalkowski, Gregg Mitchell, James Bain, and Mathew 'Joe' Wilson, were present. Director Kitty Policky was also present.

ADOPTION OF THE AGENDA

Chairman Wilson reminded those present for the meeting that the Agenda cannot be altered 24 hours prior to the meeting except for emergency items according to the Open Meetings Act. Vice Chair Mitchell moved to adopt the Agenda as printed. Board Member Moore seconded the motion. The motion carried with Moore, Kalkowski, Mitchell, Bain, and Wilson voting aye.

WELCOME GUESTS

Chair Wilson welcomed the guests to the meeting and asked that they please sign the guest log.

APPROVAL OF THE MINUTES FROM OCTOBER 22, 2008

Chair Wilson asked for any additions or corrections to the October 22, 2008 minutes. With no corrections or additions, Chair Wilson called for a motion to approve the minutes. Vice Chair Mitchell moved to adopt the minutes as presented and Board Member Moore seconded the motion. The motion carried with Kalkowski, Mitchell, Bain, Moore, and Wilson voting aye.

CHAIR REPORT

Chairman Wilson had no items.

DIRECTOR'S REPORT

Appraiser Count:

Little changes have been made to the 907 total appraisers. The appraisers are simply moving from one category to another. It is late in the year to add new credentials as not only would the initial fee be due but also the renewal fee. The number of certified general appraisers increase by one for a total of 383 appraisers and the number of certified residential increased by four for a total of 187 appraisers leaving a decrease in license appraisers from 136 to 134 and 206 registered and conversions to 203 appraisers.

RECEIPTS AND EXPENDITURES REPORT – OCTOBER 2008

The receipts and expenditures for October were reviewed by the Director by line item with the Board. A copy of the Budget Status Report is attached and considered part of these minutes. Director Policky expressed concern that the Budget Status Report reflects a 10-day lag for payroll accounting for the missing for a holiday in October and the missing per diem payments. The 10-day lag will put the accounting in November instead of appropriate consideration in October.

The Budget Status Report reflects current accounting according to Director Policky. The sequential application process is almost completed and the prospects of exceeding the budgeted amounts for contract review fees at this point are not probable. The remaining amount for contractual services should suffice until the end of the fiscal year.

Board Member Kalkowski addressed the enforcement costs. Director Policky noted that the funds available should cover what remains for the fiscal year. The costs for the latest hearings and legal are paid to date. Billing for current cases has not been received. With no further questions, Board Member Kalkowski approved the budget status report as presented. Chairman Wilson called for a motion to approve receipts and expenditures. Vice Chair Mitchell moved to accept and file the October 2008 Receipts and Expenditures report for audit. Board Member Bain seconded the motion. The motion carried with Mitchell, Bain, Kalkowski, Moore, and Wilson voting aye.

UNFINISHED BUSINESS

Upgrade Guidelines for Registered Appraisers:

The discussion continued concerning the appropriate handling of the registered credential for upgrade consideration. Director Policky as well as Board Member Moore contacted the Appraisal Subcommittee Deputy Director Denise Graves for recommendations as to what would be acceptable under federal guidelines. A call was also made to the neighboring state of South Dakota who also supports a registered credential for consideration. Board Member Moore presented a matrix to include the registered credential with the same credit for education as the trainee of 75 hours. The credit is appropriate for appraisers to be eligible to apply for credentials in other states and for the amount of education completed. The 75 hours would be credit for an upgrade to each credential leaving 75 hours of designated education for the license credential, 125 hours of designated education to upgrade to the certified residential credential and 225 hours of designated education for the certified general credential.

The purpose of the 75 hours is to grandfather the completion of the required Appraisal Principles and Procedures with the completion of Appraisal Fundamentals. The credit would leave the remaining education requirements for each credential. Credit can be applied to each upgrade for current AQB/CAP approved core curriculum education completed prior to the adoption of upgrade guidelines. For instance, if an appraiser has completed the L/CR007, Residential Report Writing and Case Studies, approved under the new AQB/CAP guidelines, the 15 hour core curriculum course can be credited to the total number of hours required in addition to the 75 hours. For an upgrade from Registered to Licensed only 60 additional hours of designated AQB/CAP core curriculum courses would be required.

Vice Chair Mitchell moved to adopt the (buff sheet) guidelines using 75 hours credit to be used for an upgrade to each credential leaving 75 hours of designated education for the license

credential, 125 hours of designated education to upgrade to the certified residential credential and 225 hours of designated education for the certified general credential.

Board Member Bain seconded the motion. The motion carried with Bain, Kalkowski, Moore, Mitchell and Wilson voting aye.

Board took a break at 10:15 a.m.

Board meeting reconvened at 10:37 a.m.

NEW BUSINESS

Issue of CMA qualifications and payment:

Director Policky distributed to each member the numerous legal opinions and that have been issued over the years concerning individuals who render Comparative Market Analysis (CMA). The discussion follows the same issues as the Broker's Price Opinion in that unless the value rendered is used for listing, purchase, or selling purposes in the course of doing business, the act is a violation of the Real Estate Appraiser Act, §76-2215 and subsequently §76-2246 by performing the Act of appraisal without obtaining proper credentialing and under the Act shall be guilty of a Class III misdemeanor. It is illegal for a non-appraiser broker to charge a fee for an opinion of the value of an interest in real estate and develop that opinion of value for the purpose of supporting a loan application.

Further, assuming the comparative market analysis meets the definition, failure to meet §76-2221(2) further stipulation that no fee be charged unless the opinion is in writing and accompanied by the necessary disclosures. But the act of developing an opinion of value addresses appraisals by unlicensed individuals in Neb. Rev. Stat. §76-2246 which, as noted, makes it a misdemeanor to engage in regulated real estate appraisal activity without an appropriate credential. "Real Estate appraisal activity shall mean the act or process of making an appraisal and preparing an appraisal report for a fee or other valuable consideration."

Although offering a comparative market analysis in the ordinary course of business is legal for the purpose of purchase, sale, and listing, it is not legal for the purpose of lending which is what has brought the issues to the attention of the Real Property Appraiser Board. By definition, evaluations as such are exempt from the Appraiser Act if they are done for the purposes as previously indicated and include a prominent disclosure when a fee is charged indicating that the opinion is not an appraisal and is only for the assistance in listing, offering, or sale. However, should the banking and financial markets process a transaction loan based on simply an opinion of value or a broker's price opinion for the act of loaning funds for transactions exceeding the federal *de minimus*, the banking and financial markets would be in violation of law.

The accepted definitions of a BPO or CMA are to be used in analyzing the requirements of Neb. Rev. State. §76-2211(2). The definitions distinguish an appraisal as being the measure of quality, value, or utility of interest that is prepared by a real property appraiser. A BPO or CMA on the other hand is prepared by a person licensed under the Nebraska Real Estate License Act which has been rendered "in the ordinary course of their business for the purpose of listing, purchase, or sale." The ordinary course of a real estate agent's business does not include advising loan brokers of the nature, quality, value or utility of specified interest in or aspects of identified real

estate. This distinguishes between the functions performed by an appraiser and those performed by someone credentialed under the Real Property Appraiser Act.

The simple act of developing an opinion of value is to practice as an appraiser without the required credentials, except as provided in the Act, is unlawful. The Board decided to appeal to the appraiser community and the public in general to report to the Board anyone who may be involved in this practice or to submit copies of their valuation reports to the Board. Any person required to be credentialed by the Act, who engages in real property appraisal activity in this state without obtaining proper credentialing, shall be guilty of a Class III misdemeanor. The Nebraska Real Property Appraiser Board will investigate complaints of unlawful appraisal activities and may refer the matter for criminal prosecution or for criminal investigation.

GENERAL PUBLIC COMMENTS

Chair Wilson asked for any public comments. With no comments, the Chair proceeded to education.

EDUCATION

Vice Chair Mitchell moved to approve the following continuing education seminars and respective instructors as listed:

Course Approval/New AQB/CAP approved submissions:

1. Trans-American Institute of Professional Studies, Kearney, NE:

- A. “*Residential Market Analysis & Highest & Best Use*” – 15 hours – L/CR004
Instructor: Lynne Heiden
- B. “*Residential Site Valuation & Cost Approach*” – 15 hours – L/CR005
Instructor: Lynne Heiden
- C. “*Residential Sales Comparison & Income Approaches*” – 30 hrs. – L/CR006
Instructor: Lynne Heiden
- D. “*Residential Report Writing & Case Studies*” – 15 hours – L/CR007
Instructor: Lynne Heiden
- E. “*Statistics, Modeling and Finance*” – 15 hours – CR/CG009
Instructor: Lynne Heiden
- F. “*General Site Valuation and Cost Approach*” – 30 hours – CG005
Instructor: Lynne Heiden

Continuing Education New:

1. Appraisal Institute, Chicago, IL:

- A. “*Appraising Distressed Commercial Real Estate*” – 7 hours – C2861
Instructors: Ted W. Anglyn
- B. “*Subdivision Valuation*” – 7 hours ONLINE – C2862-I
Instructor: Don Emerson, Jr.

2. Appraisal Mastery Center, Strasburg, CO:

- A. “*721 – Residential Field Review (FNMA Form 2000)*” – 8 hours – C2843
Instructor: David M. Ehrnstein

Continuing Education Renewal:

1. American Society of Farm Managers & Rural Appraisers:

- A. “*National USPAP Update*” – 7 hours – C2801
Instructor: No instructor submitted.

Board Member Bain seconded the motion. Motion carried with Kalkowski, Moore, Mitchell, Bain, and Wilson voting aye.

APPLICANTS & ENFORCEMENT

Vice Chair Mitchell moved that the Board go into executive session for the purpose of reviewing applicants for credentialing and consideration of written complaints and disciplinary action. A closed session is clearly necessary to prevent needless injury to the reputation of the individual or individuals relating to the issues of qualifying applicants and relating to the alleged violations of performance in real property appraisal practice. The time on the meeting clock was 11:25. Board Member Kalkowski seconded the motion. The motion carried with Moore, Mitchell, Bain, Kalkowski, and Wilson voting aye.

Vice Chair Mitchell moved to come out of executive session at 2:50 p.m. Board Member Bain seconded the motion. The motion carried with Mitchell, Bain, Kalkowski, Moore, and Wilson voting aye.

Vice Chair Mitchell moved to take the following action for the certified general by reciprocity applicant:

CG583 – James R. Natwick – Approve reciprocity application for 2009 credential.

Vice Chair Mitchell moved to take the following actions for the applicants for the license credential:

L563 – Deny and request three new reports and \$150.00 review fee.

L565 – Approve and select verification report(s).

L571 – Deny and request three new reports and \$150.00 review fee.

L573 – Approve and select verification report(s). Request letter from supervisor for attribution in regard to the report submitted.

L577 – Approve and select verification report(s).

L582 – Approve and select verification report(s).

Vice Chair Mitchell moved to take the following actions for the applicants for the certified residential credential:

CR153 – Approve applicant and select verification report(s).

CR207 – Approve applicant and select verification report(s).

CR180 – Approve and select verification report(s).

CR335 – Deny and request 2-4 family and \$250.00 review fee.

CR344 – Deny and request three new reports. No review fee as these are duplicate reports.

Vice Chair Mitchell moved to take the following actions for the applicants for the certified general credential:

CG449 – Approve applicant and select verification report(s).

CG558 – Deny and request three new reports and \$300.00 review fee.

CG563 – Approve applicant and select verification report(s).

CG564 – Deny and request three new reports and \$300.00 review fee.

CG565 – Approve applicant and select verification report(s).

CG571 – Approve applicant and select verification report(s).

Vice Chair Mitchell moved to take the following actions for the submission of verification reports:

- L547 – Approve for credentialing.
- L548 – Approve for credentialing.
- L549 – Approve for credentialing.
- L556 – Approve for credentialing.
- L560 – Approve for credentialing.
- L561 – Approve for credentialing.
- L569 – Approve for credentialing.
- L572 – Approve for credentialing.

- CR141 – Approve for credentialing.
- CR162 – Approve for credentialing.
- CR166 – Approve for credentialing.
- CR176 – Approve for credentialing.
- CR179 – Approve for credentialing.
- CR196 – Approve for credentialing.
- CR214 – Approve for credentialing.
- CR216 – Approve for credentialing.
- CR217 – Approve for credentialing.
- CR346 – Approve for credentialing.

- CG448 – Approve for credentialing.
- CG559 – Approve for credentialing.
- CG566 – Approve for credentialing.
- CG567 – Approve for credentialing.
- CG580 – Approve for credentialing.

Board Member Bain seconded the motion. The motion carried with Bain, Kalkowski, Moore, Mitchell, and Wilson voting aye.

Vice Chair Mitchell moved to take the following enforcement actions:

- 07-05 & 07-17 – Received completion documents for 15-hour National USPAP and 15-hour Residential Report Writing & Case Studies. Met terms of Consent Agreement. Close.
- 07-14 – Completed education requirement of CA by completing 15-hour National USPAP; 30-hour General Market Analysis and Highest & Best Use; and 30-hour Appraiser Reporting Writing & Case Studies. Non-Residential report sent for review. Report met the minimum USPAP Standards. Close.
- 08-06 – Conditions of Consent Agreement cannot be met at this time. Inactivate credential as of 11/20/2008 until conditions of Consent Agreement are met and renewal obligations completed.
- 08-04 – Appraiser Board granted 3 month extension for medical reasons making the due date for the completion of the education requirement March 31, 2009.
- 08-11 – Proceed with steps of filing formal complaint.
- 08-13 – Board Member to participate in Conference call 10:00 on Tuesday, Nov. 25th.

08-15 – Offer Consent Agreement to 15-hour National USPAP; 15-hour Residential Report Writing & Case Studies and quarterly submission of a selected report with \$150.00 review fee each quarter for the length of one year from the date respondent signs agreement. Education must be completed by June 30, 2009.

08-17 – Advisory Letter. Close

08-18 – Order to remove reciprocity credential in Nebraska and return wall document and pocket card. Have not received documents to date. No response. Credential has been inactivated.

08-19 – Offer Consent Agreement to 15-hour National USPAP. 30-hour Residential Sales Comparison and Income Approaches to be completed by June 30, 2009.

Board Member Kalkowski seconded the Motion. Motion carried with Kalkowski, Moore, Mitchell, Bain, and Wilson voting aye.

Vice Chair Mitchell moved to take the following enforcement actions:

08-20 – Hold. Review has not been returned..

Board Member Bain seconded the Motion. Motion carried with Moore, Mitchell, Bain and Wilson voting aye. Board Member Kalkowski abstained.

Tentative meeting dates were approved as follows: January 22, 2009
February 19, 2009
March 19, 2009

ADJOURNMENT

Vice Chair Mitchell moved to adjourn the November 20, 2008 meeting. Board Member Kalkowski seconded the motion. Motion carried unanimously.

At 3:15 p.m. Chair Wilson adjourned the November 20, 2008, meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on November 1, 2008, in compliance with Nebraska Statute §84-1413(5).